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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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| 09/128,289      | 08/03/98    | BURKE                | W 2041              |

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IM62/0803

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| EXAMINER |
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JUSKA, C

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| ART UNIT | PAPER NUMBER |
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1771

DATE MAILED:

08/03/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/128,289

Applicant(s)

Burke et al.

Examiner

Cheryl Juska

Group Art Unit  
1771



☒ Responsive to communication(s) filed on Apr 28, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-8 and 10-17 is/are pending in the application

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-8 and 10-17 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1771

## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment A, submitted as Paper No. 7 on April 28, 2000, has been entered. The specification has been amended as requested. Claims 1 and 11 have been amended, while claim 9 has been cancelled. The pending claims are 1-8 and 10-17.
2. Said amendment is sufficient to withdraw the objections to the specification, as set forth in sections 1 and 2 of the last Office Action. Additionally, Amendment A is sufficient to withdraw the 112, 2nd rejections of claims 1 and 9, as set forth in sections 4-6 of the last Office Action.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 3, 4, and 11-13 are rejected under 35 U.S.C. 103(a) as obvious over EP 702 929 issued to Kerr (EP Kerr) in view of US 5,968,631 issued to Kerr (Kerr '631). A discussion of the EP Kerr reference with regard to Applicant's claims can be found in the last Office Action, section 9.

Claims 1, 3, 4, and 11-13 were previously rejected under 102/103 by the EP Kerr reference. The changes to the claims made in Amendment A were made to overcome the 112 issues, rather than to distinguish the present invention from the cited prior art. Applicant argued

Art Unit: 1771

the 102/103 rejection by asserting that the "mere mention of a nonwoven does not rise to the level of anticipation, particularly where the specifically claimed substrate must exhibit certain functional aspects not even alluded to within the cited prior art reference" (Amendment A, page 5, lines 14-17). The Examiner respectfully disagrees with Applicant's argument.

EP Kerr clearly teaches the carrier layer may be a woven or nonwoven fabric (page 3, lines 39-41). (It is noted that Applicant is erroneous in asserting that EP Kerr also teaches "knit, etc." carrier layers.) It is not necessary for the EP Kerr reference to exemplify a nonwoven carrier layer in order to anticipate Applicant's claims. It is also noted that EP Kerr does not exemplify any kind of carrier layer, but rather only exemplifies the rubber backing.

Applicant also argues that EP Kerr does not teach the specifics of the claimed nonwoven. The Examiner concedes that EP Kerr is silent with respect to the specific limitations claimed in independent claims 1 and 11 (that the nonwoven substrate possesses a heat shrinkage factor ranging from 2.0 to 2.5%) and dependent claims 3, 4, 12, and 13 (the nonwoven substrate is of natural or synthetic fibers selected from the group consisting of polyester, nylon, polypropylene, cotton, and blends thereof). Thus, the 102 rejection is hereby withdrawn. However, it is asserted that said limitations are obvious over the cited EP Kerr reference.

EP Kerr merely teaches that the carrier layer is "of [a] suitable material" (page 3, line 40). Without a specific teaching as to what materials are "suitable," one of ordinary skill would look to the prior art. For example, Kerr '631 teaches a woven or nonwoven carrier layer of polypropylene (col. 3, lines 8-10). Thus, it would have been obvious to one of ordinary skill in

Art Unit: 1771

the art to use a known polypropylene nonwoven material for the carrier layer, as is taught by Kerr '631, wherein one of ordinary skill is motivated by the teachings of EP Kerr to choose a "suitable" material for said nonwoven carrier layer and by the teaching by Kerr '613 that a polypropylene nonwoven is a "preferred" carrier layer material.

Additionally, it is argued that it would have been obvious to one of ordinary skill in the art to choose a nonwoven carrier layer substrate with the claimed heat shrinkage factor. Motivation to do so would be to prevent differential shrinkage between the carrier layer and the rubber backing. It was previously asserted that the rubber backing of EP Kerr inherently meets Applicant's limitation to the backing having a heat shrinkage factor of 2.0 to 2.5%. (It is noted that Applicant has not traversed this inherency argument). Thus, it would have been obvious to one skilled in the art to choose a nonwoven substrate having a shrinkage factor equivalent to the shrinkage factor of the rubber backing, which, in this case, is a range of 2.0 to 2.5%, in order to prevent differential shrinkage between the rubber backing and the nonwoven carrier layer upon heating during curing of said rubber backing and/or during laundering of the floor mat. Therefore, claims 1, 3, 4, and 11-13 are rejected as being obvious over the cited prior art.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the cited EP Kerr patent in view of the cited Kerr '631, as applied to claim 1 above, and in further view of WO 96/38298 issued to Burke et al. A discussion of the cited art with regard to Applicant's claim limitations can be found in section 11 of the last Office Action.

Art Unit: 1771

6. Claims 6, 7, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited EP Kerr patent in view of the cited Kerr '631, as applied to claims 1 and 11 above, and in further view of US Patent 4,820,566 issued to Heine et al. A discussion of the cited art with regard to Applicant's claim limitations can be found in section 12 of the last Office Action.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as obvious over the cited EP Kerr patent, in view of Kerr '631, as applied to claim 1 above. A discussion of the cited EP Kerr reference with regard to the limitation of claim 10 can be found in the last Office Action, section 10.

8. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited EP Kerr patent in view of the cited Kerr '631, as applied to claims 1 and 11 above, and in further view of the cited Heine patent and US Patent 5,906,877 issued to Popper et al. A discussion of the cited art with regard to Applicant's claim limitations can be found in section 13 of the last Office Action.

9. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited EP Kerr patent in view of the cited Kerr '631, as applied to claims 1 and 11 above, and in further view of US Patent 4,722,954 issued to Hallworth. A discussion of the cited art with regard to Applicant's claim limitations can be found in section 14 of the last Office Action.


10. Applicant's traversal of the rejections of dependent claims 2, 5-8, 10, and 14-17 is based upon the traversal of EP Kerr as a primary reference. Thus, said dependent claims are now rejected based upon the arguments set forth in the rejections of claims 1 and 11 as being obvious

Art Unit: 1771

over EP Kerr and Kerr '613 and based upon the individual arguments of the secondary art, as set forth in sections 10-14 of the last Office Action.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached at (703) 308-2414. Fax numbers for this Group are (703) 305-3601 and (703) 305-7718.



CHERYL JUSKA  
PATENT EXAMINER

cj

July 28, 2000